

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Provision of Improved Telecommunications)	CC Docket No. 98-67
Relay Services and Speech-to-Speech)	
Services for Individuals with Hearing and)	
Speech Disabilities)	
)	
National Exchange Carrier Association)	
(NECA) Submits the Payment Formula and)	
Fund Size Estimate for Interstate)	
Telecommunications Relay Services (TRS))	
Fund for July 2003 Through June 2004)	

REPLY COMMENTS OF VERIZON¹

Introduction

AT&T argues that “the Commission must eliminate recovery of LECs’ TRS Fund contributions from carrier access charges,” because such charges are “implicit subsidies” prohibited by section 254(e) of the Act.² AT&T is wrong as a matter of law, because section 254(e) does not govern the recovery of Telecommunications Relay Services (“TRS”) Fund costs. AT&T’s argument that, “[a]ll independent local exchange carriers and the majority of Bell companies now have in-region long distance authority” and thus would be able to recover these contribution obligations “through their interstate toll rates,” AT&T Comments, at 7, ignores the fact that the separate affiliate requirements of section 272 do not allow long distance affiliates of local exchange carriers the same flexibility as AT&T has. Moreover, AT&T’s arguments are procedurally misplaced. If

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

² Comments of AT&T Corp., CC Docket No. 98-67, at 4-7 (filed May 22, 2003) (“AT&T Comments”).

AT&T wishes for the Commission to reconsider its rules regarding recovery of TRS Fund contributions, it should petition the Commission for a rulemaking proceeding.

I. THE PROHIBITION ON “IMPLICIT SUBSIDIES” DOES NOT APPLY TO TRS FUND CONTRIBUTIONS

AT&T’s arguments about section 254’s prohibition against “implicit subsidies” are inapposite to the issue of TRS Fund recovery. The “implicit subsidies” prohibition comes from language in section 254(e) of the Act, which requires that universal service support be “explicit and sufficient”:

(e) UNIVERSAL SERVICE SUPPORT. —After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

47 U.S.C. § 254(e). The title of that section, as well as the language in it referring to “*such* support,” plainly indicate that the “explicit and sufficient” requirement applies only to prevent implicit subsidies of services supported by *universal service* programs. Moreover, the Fifth Circuit decisions that AT&T cites as having held that “the plain language of § 254(e) does not permit the [Commission] to maintain *any* implicit subsidies,” AT&T Comments, at 4, also only apply that limitation to subsidies of *universal service*.³

³ See *Comsat Corporation v. FCC*, 250 F.3d 931, 938 (5th Cir. 2001) (“We hold that permitting this method of cost recovery countermands Congress’s clear legislative directive, as we articulated in [*Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999)] and reaffirmed in [*Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000)], that *universal service support* must be explicit.” (emphasis added)).

The TRS Fund is not part of universal service. Rather, it was established with independent statutory authority under the Americans with Disabilities Act of 1990.⁴ It has its own cost recovery mandate that is different than that of universal service. *See* 47 U.S.C. § 225(d)(3). It does not contain the same “explicit and sufficient” language that courts have relied upon in prohibiting implicit subsidies under section 254(e). Instead, the TRS statute allows recovery of interstate TRS costs from all interstate services.⁵ Thus, AT&T’s arguments about the prohibition against “implicit subsidies” do not apply to recovery of TRS Fund contributions.

II. SECTION 272’S SEPARATE AFFILIATE REQUIREMENTS LIMIT LOCAL EXCHANGE CARRIERS’ ABILITY TO RECOVER THEIR COSTS FROM LONG DISTANCE AFFILIATES

AT&T also wrongly suggests that because local exchange carriers have achieved 271 authority to provide long distance, they necessarily “would be able to recover their [TRS] obligation through their interstate toll rates, just as other long distance carriers do.”

⁴ *See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Second Order on Reconsideration and Fourth Report and Order, 9 FCC Rcd 1637, ¶ 3 (1993) (“1993 TRS Order”).

⁵ Section 225(d)(3) states:

(3) JURISDICTIONAL SEPARATION OF COSTS. —

- (A) **IN GENERAL.**—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.
- (B) **RECOVERING COSTS.** —Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

AT&T Comments, at 7.⁶ At least absent a rule change by the Commission, the separate affiliate requirements of section 272 may prohibit the type of cross-affiliate cost recovery that AT&T suggests. Section 272 requires local exchange carriers and their long distance affiliates to keep separate books and operate independently. *See* 47 U.S.C. § 272(b).

III. THE COMMISSION CANNOT REVISE CARRIERS' ABILITY TO RECOVER TRS FUND CONTRIBUTIONS WITHOUT A SEPARATE RULEMAKING PROCEEDING

The Public Notice upon which AT&T's Comments are based merely requests comment on NECA's proposals regarding the interstate TRS payment formula and fund size estimates for July 1, 2003 through June 30, 2004.⁷ It has a very short comment cycle, in keeping with the limited nature of the questions raised in the Public Notice. *Id.* (showing the Public Notice was released on May 2, comments were due on May 22, and reply comments are due May 29). It does not invite comment on the broader questions, raised in AT&T's comments, about the manner in which contributions to the TRS Fund are recovered.

In the context of a prior rulemaking proceeding, the Commission long ago clarified that price cap regulated local exchange carriers can recover TRS Fund costs in exogenous adjustments to their access rates.⁸ AT&T's argument for a different recovery

⁶ AT&T actually referred to this as a carrier's "USF obligation." AT&T Comments, at 7. As stated above in section I, TRS is not part of the universal service fund, and therefore is not a "USF obligation."

⁷ *See National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size Estimate for Interstate Telecommunications Relay Services (TRS) Fund for July 2003 Through June 2004*, Public Notice, CC Docket No. 98-67, DA 03-1491 (rel. May 2, 2003) ("Public Notice").

⁸ *See* 1993 TRS Order, ¶ 18 ("We are persuaded by petitioners to clarify that for TRS fund contributors regulated under price cap regulation, contributions may be treated as exogenous costs for the purposes of calculating the price cap index.").

system cannot be considered absent public notice and a new rulemaking proceeding. The Administrative Procedures Act prohibits overturning a Commission rulemaking without such a proceeding.⁹

Conclusion

The Commission should reject AT&T's request to change the way that local exchange carriers recover TRS Fund contributions.

Respectfully submitted,



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⁹ See 5 U.S.C. § 553(b); *Sprint Corp. v. FCC*, 315 F.3d 369, 373-74 (D.C. Cir. 2003).

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.